

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

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Mailed: April 12, 2005

Opposition No. 91122000

AMAZON.COM, INC.

v.

VON ERIC LERNER KALAYDJIAN

Before Chapman, Bucher and Drost, Administrative Trademark Judges.

By the Board.

This case now comes up on (1) opposer's motion (filed November 19, 2004 via certificate of mailing) to compel a response to Interrogatory No. 1 of opposer's first set of interrogatories; and (2) applicant's combined motion (filed January 13, 2005) to dismiss and its untimely response to opposer's motion to compel. Both motions are addressed in turn below.

Opposer's Motion to Compel

Applicant (proceeding pro se) has not filed a timely response to opposer's motion to compel. Trademark Rules 2.127(a) and 2.119(c) provide that a response to a motion (except for a motion for summary judgment) must be filed within fifteen days of the date of service of the motion, or twenty days if, as was done here, service of the motion was

made by first class mail. Therefore, applicant's response to opposer's motion to compel was due on December 9, 2004. Because we must take into account applicant's pro se status, and because the Board has not received an objection from opposer to the filing of applicant's untimely response, we have exercised our discretion and have considered applicant's response to opposer's motion to compel. See Trademark Rule 2.127(a); and TBMP § 502.04 (2d ed. rev. 2004).

Applicant's argument in response to the motion is not well taken. Applicant maintains - in a paper typed entirely in capital letters and replete with spelling mistakes, grammatical errors and incoherent arguments - that "ALL DISCOVERY WAS PRODUCED TO OPPOSER IN THE YEAR 2001."¹ However, opposer served Interrogatory No. 1 on July 1, 2004, three years after 2001, and the record is devoid of any evidence that applicant made any response to opposer's Interrogatory No. 1 (which seeks identification of persons with knowledge of and all documents relating to applicant's denials of opposer's first set of requests for admissions).

¹ We are aware that the Board suspended proceedings in this case on September 25, 2001, in view of a civil action between the parties, i.e., Civil Action No. 01-02041 in the United States District Court for the Central District of California. This will be further addressed in this order.

In view of the foregoing, opposer's motion to compel is granted, and applicant is ordered to serve a full response to Interrogatory No. 1 on opposer's attorney of record within **thirty days** from the mailing date of this order, without making any objections² to Interrogatory No. 1.

Should applicant fail to comply with this order in the time period allowed, the Board will entertain a motion for sanctions by opposer. See Trademark Rule 2.120(g).

Applicant's Motion to Dismiss

Applicant maintains in its two-page motion that its motion is "BASED ON THE WRONGFULL ONGOING ACTIONS OF AMAZON.COM CORP ET ALL.," stating that "OPPOSER HAS BEEN INVOLVED IN CHEAP, LUDICROUS, DANGEROUS, TACTICTS THAT HAVE BEEN HARRASING AND BULLY TACTICTS AGAINST APPLICANT ... AND MALICIOUSLY THREATED APPLICANT THAT AMAZON.COM MAY GO TO LAW ENFORCEMENT STATING AND ACCUSING AGAIN THAT I VON ERIC LERNER KALAYDJIAN IS A CRIMINAL"; and that "OPPOSER AMAZON.COM CORP. HAVING KNOWLEDGE OF COSMETICSAMAZON WEBSIGHT VLK.COM ALLOWED AN ENTITY WITHOUGHT MY CONSENT OR PERMISSION TO SUBMIT AND ADVERTISE AN AMERICAN TRADEMARK ... FROM THE AMAZON.COM A9.COM SEARCH ENGINE FOR VLK.COM."

(Capitalization in the original.)

² Applicant has waived its right to object by not timely responding to the interrogatory. See TBMP § 405.04(a) (2d ed. rev. 2004).

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Applicant's motion to dismiss is denied for the following reasons: (1) it was filed after the Board suspended proceedings for consideration of opposer's motion to compel and ordered that no party should file any paper which is not germane to the motion in accordance with Trademark Rule 2.120(e)(2), and the motion is not germane to the motion to compel; (2) it does not show proper proof of service as required by Trademark Rule 2.119(c) and applicant was clearly previously advised of this requirement in the Board order dated May 5, 2004; and (3) the motion to dismiss is not well taken.

Proceedings are now resumed and the discovery and trial periods are reset as indicated below. IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party WITHIN THIRTY DAYS after completion of the taking of testimony. Trademark Rule 2.125.

DISCOVERY TO CLOSE: June 1, 2005

30-day testimony period for party
in position of plaintiff to close: August 30, 2005

30-day testimony period for party
in position of defendant to close: October 29, 2005

15-day rebuttal testimony period
to close: December 13, 2005

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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Additionally, as noted in footnote 1, proceedings in this case were suspended on September 25, 2001 pending final disposition of a civil action between the parties. The parties have not indicated whether the final disposition of the civil action has a bearing on this case. Thus, opposer is allowed until **thirty days** from the mailing date of this order to (1) inform the Board how the court disposed of the civil action, including any appeals; (2) file a copy of the pleadings in the civil action, and (3) file a copy of the court order(s) disposing of the civil action.

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